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Walker. Judgment for plaintiff, and defendant brings error. Affirmed.

J. W. Read and *Lett & Massie*, all of Newport News, for plaintiff in error.

Nelms, Colonna & McMurren and *A. D. Jones*, all of Newport News, for defendant in error.

MADDUX et al. v. BUCHANAN et al.

June 14, 1917.

[92 S. E. 830.]

1. Appeal and Error (§ 931 (10*))—Presumptions—Commissioner's Report.—A commissioner's report upon a question of fact confirmed by the trial court is presumably correct.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3728.* 1 Va.-W. Va. Enc. Dig. 623; 15 Va.-W. Va. Enc. Dig. 74.]

2. Mechanics' Liens (§ 113 (2*))—Subcontractors—Owner's Liability.—Under the provisions of the Mechanic's Lien Law (Code 1904, §§ 2477, 2479) that an owner is not liable to subcontractors in excess of sum he owed the general contractor at or after receiving notice of the subcontractor's intention to claim a lien, a subcontractor can enforce no greater liability than that.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 148.* 9 Va.-W. Va. Enc. Dig. 765-772.]

3. Mechanics' Liens (§ 100*)—Subcontractors—Notice of Contract.—A subcontractor, desiring to collect his claim from the owner by mechanic's lien proceedings or because owner is individually liable, is charged with notice of the owner's unrecorded contract with the general contractor; the recording of such contracts not being required.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 133.* 9 Va.-W. Va. Enc. Dig. 772.]

4. Mechanics' Liens (§ 113 (1*))—Necessity of Decision.—In mechanic's lien proceedings by a subcontractor, it is unnecessary to decide whether the general contractor's account against the owner was correctly charged with certain items, where such contractor would still owe the owner if contested items were eliminated.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 148.* 9 Va.-W. Va. Enc. Dig. 772.]

5. Appeal and Error (§ 926 (8*))—Presumptions—Excluding Deposition.—Where the record is not clear and counsel are not agreed

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

upon the facts regarding a deposition's exclusion, the lower court's action is presumably correct.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2899, 3747.* 1 Va.-W. Va. Enc. Dig. 611, 613.]

6. Appeal and Error (§ 1056 (4)*)—Harmless Error—Excluding Deposition.—Any error of a trial court in excluding a deposition is harmless, where the commissioner apparently considered it, and his action was affirmed by the trial court, and the Supreme Court considers the deposition should not have changed the result.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4190.* 1 Va.-W. Va. Enc. Dig. 595.]

7. Appeal and Error (§ 750 (7)*)—Assignment of Error—Sufficiency.—In mechanic's lien proceedings by a subcontractor, an assignment of error that the architect's certificate that the contractor owed the owner was not binding upon the subcontractor will be overruled where the finding of such indebtedness was based, not only upon the certificate, but upon other evidence.

8. Mechanic's Liens (§ 102*)—Subcontractors—Architect's Certificate.—In mechanic's lien proceedings by a subcontractor, the architect's certificate, made pursuant to a contract provision, that the contractor owed the owner, is conclusive in absence of fraud.

[Ed. Note.—For other cases, see Mechanics' Liens, Cent. Dig. § 134.* 9 Va.-W. Va. Enc. Dig. 764, 772; 13 Va.-W. Va. Enc. Dig. 990, 989.]

Appeal from Circuit Court, Loudoun County.

Mechanic's lien proceeding by T. H. Maddux and others against James A. Buchanan and others. Decree for defendants, and plaintiffs appeal. Affirmed.

J. Donaldson Richards, of Warrenton, *W. H. Martin*, of Leesburg, and *R. R. Farr*, of Fairfax; for appellants.

E. E. Garrett, of Leesburg, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.